

**BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement
of a Revoked License:

TERRY H. DAY,

Petitioner.

Case No. 1E-2007-183884

OAH No. L2008010451

DECISION

This matter was heard by a quorum of the Physician Assistant Committee of the Medical Board of California on February 6, 2008, in Los Angeles, California. Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, presided.

Deputy Attorney General Vladimir Shalkevich represented the Department of Justice.

Terry H. Day (petitioner) appeared personally and represented himself.

Evidence was received and the matter was submitted for decision. At the hearing, Mr. Shalkevich submitted an "Opposition to Petition for Reinstatement of License." This document, which was referred to in the hearing, is hereby marked as exhibit 7 for identification to complete the record in this case.

FACTUAL FINDINGS

1. On or about February 16, 1977, the Physician Assistant Examining Committee issued Physician Assistant License No. PA 10074 to petitioner.

2. By a decision dated January 10, 1985, the Physician Assistant Examining Committee suspended petitioner's license for one year. The suspension was stayed for a period of one year on certain conditions including, inter alia, that petitioner not operate, manage or control in any way whatsoever a medical practice and/or office; and that petitioner shall not own any financial interest whatsoever in a medical practice or medical office.

3. The facts and circumstances underlying the discipline were based on petitioner's involvement in two separate medical practices as follows:

- (a) The first one, known as "Arrowhead Medical Clinic," was owned by unlicensed individuals who employed petitioner and his supervising physician between March 1979 and January 1981. Initially, the supervising physician would appear at Arrowhead Clinic once or twice a month. However, the number of appearances diminished over time to once every six months. Petitioner informed a representative of the Committee of this lack of supervision. Although, the Committee determined that there was cause for discipline against petitioner's license for practicing medicine without sufficient supervision, the Committee found mitigating circumstances based on petitioner's actions in informing the Committee.
- (b) A few months after leaving Arrowhead Medical Clinic, petitioner acquired controlling interest in a new medical practice known as the "Family Practice Office." At this new clinic, petitioner was supervised by Daniel L. Johnson, M.D. In connection with the operation of this clinic the Committee found cause for discipline in that petitioner performed medical tasks which exceeded the scope of practice of a physician assistant in that he operated a medical clinic which he owned jointly with Dr. Johnson.

4. Effective July 8, 2002, petitioner entered into a Stipulated Surrender of License and Order wherein petitioner admitted all of the charging allegations and causes for discipline set forth in Accusation No. 1E-2001-124404. Pursuant to the stipulated surrender of his license, petitioner admitted that in 1998 and 1999, he operated a business called Board and Care Specialties (BCS). BCS provided care for patients at Pacific Manor, a board and care facility. In connection with providing medical care for these patients, petitioner on at least three occasions prescribed medications for patients at Pacific Manor without patient specific authorization from his supervising physician. Further, petitioner kept patient files at Pacific Manor without informing his supervising physician. Petitioner also admitted that he allowed others to refer to him as "Dr." and "doctor." Finally, petitioner admitted that he: (1) did not obtain written guidelines for supervision, in violation of California Code of Regulations (CCR), title 26, section 1399.545, subdivision (e); (2) did not obtain a written delegation of authority from his supervising physician, in violation of CCR, title 26, section 1399.540; (3) did not obtain written transport and backup procedures required by CCR, title 26, 1399.545, subdivision (d); and (4) did not obtain written protocols required by Business and Professions Code section 3502.1, subdivision (b)(2).

5. Petitioner testified at the hearing before the Committee but he did not establish rehabilitation. Despite petitioner's admissions in the Stipulated Surrender of License and Order, petitioner essentially denied culpability for his misconduct. Petitioner's misconduct

occurred over a long period of time and included serious violations of various statutes and regulations designed to protect the public from autonomous practice by a physician assistant without appropriate supervision. One of the hallmarks of rehabilitation is to accept responsibility for misconduct. Petitioner has not done so in this case.

LEGAL CONCLUSIONS

1. Respondent has the burden to prove that he is sufficiently rehabilitated to have his license reinstated. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) Petitioner failed to establish rehabilitation in this case.

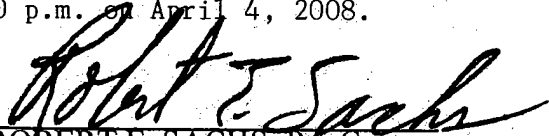
2. Cause does not exist pursuant to Business and Professions Code section 3530, and California Code of Regulations, title 16, section 1399.526, to grant the Petition for Reinstatement filed by petitioner, based on Factual Findings 2 through 5.

ORDER

The Petition for Reinstatement filed by Terry Hall Day is denied.

This decision shall become effective at 5:00 p.m. on April 4, 2008.

DATED: March 5, 2008


ROBERT E. SACHS, PA-C
Chairman,
Physician Assistant Committee